IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 32 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LALABHAI KARSANBHAI VAGHRI

Versus

STATE OF GUJARAT

Appearance:

MS BHARTI RANA for MS BANNA S DUTTA for Appellant

MR KP RAWAL, APP for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE M.C.PATEL

Date of decision: 05/05/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE M.C.PATEL)

1. The appellant Lalabhai Karsanbhai was the accused no.2 in Sessions Case No.59 of 1994 before the Additional Sessions Judge, Ahmedabad (Rural). The accused no.1 was Vaghri Natubhai Ramjibhai. They were alleged to have killed Bhupatbhai Ramtubhai Pagi by giving as many as 37 knife blows in the morning on 16th June, 1992. They were charged with the offence under Section 302 read with Section 34 of the I.P.C. They were convicted of the said offence at the end of the trial and each of them was sentenced to a life term.

2. Only the appellant, who was accused no.2, has filed this appeal challenging the said order of conviction and sentence. The other accused namely Natubhai Ramjibhai, has not filed any appeal.

3. The prosecution case is to be found in the evidence of the complainant Maghiben Mashrubhai (p.w.2), who was the wife of the deceased Bhupatbhai. The deceased Bhupatbhai and the appellants were residents of village Dhedhal, District Ahmedabad. According to Maghiben, both the accused came to their house in the evening. Her husband had borrowed Rs.100/- from Natu Ramji and they had come to demand payment of the same. Since her husband was not in a position to repay the amount, the appellant Lala Karsan said that he would pay Rs.100/- to Natu on his behalf and he told the deceased to work in his field. Next day, at about 5 o'clock in the morning, the appellant came to fetch her husband and he went with the appellant. At about 6 o'clock, she went to the field to give food to her husband. She saw both the accused tying up a bundle. She raised a shout and asked them where her husband was. However, on hearing her cry, they dropped the bundle and ran away. She went there and saw that the whole bundle was smeared with blood and it contained the dead body of her husband. There were injuries on all parts of the body. Her complaint was recorded (Exh.60) at about 9 o'clock at the Bavla Police Station which was at a distance of 5 kms from the place of incident.

4. This witness was subjected to lengthy cross-examination calculated to trip up a rustic, illiterate witness, but on reading her evidence, we are satisfied that she told her story in a natural manner and we see no reason to disbelieve her.

5. Her evidence is supported by the evidence of two neighbours. One is Vijan Ramtu (p.w.5) who was the

brother of the deceased. According to him, he overheard the talk between the accused and deceased Bhupat when Natu Ramji demanded Rs.100/- and Lala Karsan offered to pay the same to Natu Ramji on behalf of Bhupat and told Bhupat to work in his field. According to him, both the accused called next morning at about 5 o'clock and Bhupat went with them. After daybreak, Bhupat's wife went to give food to her husband and he went to Bavla chowkdi in search of work. He saw both the accused passing there and their clothes were smeared with blood. The witness went back to his village since he could not find work. Thereafter, he learnt that his brother had been killed by the accused.

6. Chhotubhai Mapabhai (p.w.7) was another neighbour who overheard the talk between Bhupat and the accused. He also saw Bhupat leaving in the company of both the accused at 5 o'clock next morning.

7. Ramubhai Ukabhai (p.w.4) was going to his field in the morning. At that time, he had met Natu Ramji on the way. He was frightened and his clothes were stained with blood. When he asked Natu Ramji the reason, he told him that there was a quarrel between the deceased on the one hand and himself and Lala on the other hand. Thereafter, according to the witness, he saw Bhupat's wife coming and she was crying. He asked her what had happened and she told him that her husband had been killed by the accused and his dead body was lying in a bundle in the field. These three witnesses were also cross-examined at length but nothing substantial was elicited which would throw doubt on their evidence.

8. The post-mortem was carried out by Dr. H.G. Jadav (p.w.13) and, according to him, there were numerous stab injuries on the chest, abdomen and other parts of the body. They were sufficient in the ordinary course of nature to cause death. It is also in evidence that clothes of the deceased were discovered from a hedge near the 'chhapra' of Natu Ramji at his instance.

9. Thus, though there is no direct eye-witness, the prosecution has satisfactorily established the following circumstances:

(i) Both the accused came in the evening to demand payment of Rs.100/- which the deceased owed to Natubhai and the appellant offered to pay the said amount on behalf of the deceased if the deceased

agreed to work in his field.

(ii) The accused again called in the morning and the deceased left in their company to go to work, as agreed.

(iii) When the wife of the deceased went to give food to her husband, she saw the accused tying up a bundle and on hearing her cry, the accused dropped it and ran away. The bundle contained the dead body of her husband.

(iv) Natu Ramji was also seen soon thereafter by Ramubhai Ukabhai (p.w.4) and his clothes were stained with blood at that time and Natu told him that there had been a quarrel between the deceased on the one hand and himself and the appellant on the other hand.

(v) The clothes of the deceased were discovered at the instance of Natubhai.

10. In our opinion, the circumstances which have been established by the prosecution case, as outlined above, form a complete chain and the only inference that can be drawn is that it was the appellant who had killed Bhupatbhai and the circumstances are inconsistent with any hypothesis except that of the guilt of the appellant. We are, therefore, satisfied that the learned Additional Sessions Judge has rightly found the appellant guilty of killing Bhupatbhai. There is no substance in the appeal and the same is dismissed.

(M.H. Kadri, J.)

(M.C. Patel, J.)

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